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**The Emancipation Proclamation and  
Arbitrary Arrests !!**

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**S P E E C H**

OF

**HON. GILBERT DEAN,**

OF NEW YORK,

ON THE GOVERNOR'S ANNUAL MESSAGE,

DELIVERED IN THE HOUSE OF ASSEMBLY OF THE STATE  
OF NEW YORK,

February 12, 1863.

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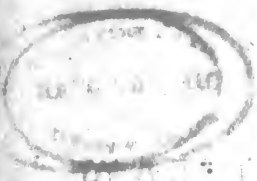
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# S P E E C H .

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Mr. CHAIRMAN: When last the House was in Committee of the Whole on the subject now to be considered, I obtained the floor for the purpose of replying to the speech made by my friend from Essex, the Hon. Mr. Havens. He confined himself in his remarks to two portions of the annual message of the Governor. The first was, the strictures of the Governor on the policy of the Emancipation Proclamation of the President. The second, that portion of the message which condemns the arbitrary arrest of citizens of this State.

While there are numerous other subjects suggested by this document, I propose to confine myself, in the discussion, to the questions raised by the gentleman from Essex.

Sir, I might, if I indulged in the utterance of my own feelings in reference to the necessity of this war, occupy the hour in showing that the wrong is not all on one side. But the time for such remarks has passed. It is too late now to discuss the cause of the war, or to express an opinion on whom must rest the blame of the present deplorable condition of national affairs. Crimination and recrimination are alike fruitless and unsatisfactory. Nearly two years have passed since armed hosts have met in hostile array; and we must accept the present position of affairs and act on that. It is a fact that armies are in the field—that they have confronted each other—that victory has been at one time on the side of the Union, and next on that of the Confederates. It is a fact that to-day, though the legitimate authority of the Republic and the legitimate power of the government is with us, we have not, after a contest of nearly two years, been able to overcome the rebellion which exists against that legitimate authority and power. Equally unavailing would be an argument to prove that the adoption of the Federal Constitution by the people, made us one nation, and that no State has a right to secede.

The actual secession of eleven States—if not *de jure*—at any rate *de facto*, forming themselves into a new confederacy, is a portion of history which no argument can efface.

To spend time now in determining whether the fanaticism of the North, or the madness of the South, produced the result; whether slavery is the *cause* or the *subject* of the controver-

ty, is unprofitable. When your dwelling is on fire, you first quench the conflagration—then seek to detect and punish the incendiary.—When a mother sees her child drowning, she rescues him from danger before asking if his own fault or folly precipitated him into the stream. So now, patriotism and duty call upon us all to exert every effort, yield every prejudice, and surrender personal and party attachments, to save, if possible, the best government from anarchy and consequent annihilation. I shall not comment upon words or expressions, nor even compliment sentences contained in the message.—He who stops to applaud or criticise even the style of that masterly production, is trifling, while events the most momentous are transpiring.

It is due to the gentleman from Essex, as well as to myself, before proceeding further, to say that until last evening, I was unable to procure a copy of the remarks made by him on the subject to which I have referred.

## EXECUTIVE POWER—ITS ABUSE IS TYRANNY AND REVOLUTION.

If I were to express my own views in reference to the message, I would say to every intelligent man and woman in the State, read study and re-read and study it again—send it to the schools and the academies—make it a part of the daily recitations of the scholars, that we may as a people be again reminded of the value of our liberties. The very effluence of our political privileges has made us prodigal in their use and forgetful of their inestimable value. Never in the history of the State has such a message been delivered, and never has such a crisis occurred. For more than six centuries have our ancestors been struggling to secure, and have little by little wrested from arbitrary power, that which by three proclamations must be forever destroyed if we submit; and submission is not only cowardice, but treason—while the continued exercise by the Executive of the powers claimed is Usurpation, Tyranny and Revolution. I know what I say, and I say what I know. I appreciate my responsibilities as a citizen, as an individual, and as a member of this House. If I refused to protest against the course of the Federal Administration, feeling as I do, I should be recreant to

myself, and recant to my duty as a representative of the people of this State. [Loud and continued applause.]

The President has taken an oath "to preserve, protect and defend the Constitution of the United States;" and knowing that that Constitution is "the Supreme Law of the Land," "usurpation" is the mildest term to be applied to an open, palpable, and continued exercise of powers, not only not conferred on the executive, but the exercise of which is expressly forbidden. Let us see, then, if these proclamations correspond with the Constitution, or whether, if operative, they must override its provisions. If any member on this floor can show me a word in that instrument which authorizes the proclamations I will presently read, and the orders of the Secretary of War under those proclamations, creating throughout loyal and peaceful States, Provost Marshals, with authority to arrest summarily and arbitrarily, any and every citizen, and without trial make them prisoners of war—subjecting at the will of these irresponsible marshals whole States, where war does not exist, to Martial law—I would like him to point it out to me here. If it cannot be done, I am justified in the assertion that these proclamations and orders are a violation of "the Supreme Law of the Land," by which the President has sworn to abide.

It is perhaps proper that I should say in the commencement of this argument, that I am not here to oppose Mr. Lincoln as the President of the United States. In this very city, when the candidate of the Republican party for Lieutenant Governor in the last fall election, and those with whom he acted, denied the power of the General Government to coerce a State, I took the opposite position, and also insisted that Mr. Lincoln, having been constitutionally elected, should be inaugurated at all hazards. I went further, and declared after the inauguration of the President, that I would not oppose any act of his administration having for its object the suppression of the rebellion, the restoration of the Union and the supremacy of the Constitution—that I was willing to take him for my political Pope, and would not question his acts so long as he took for his guide the Constitution he had sworn to obey and uphold. But in September last I saw that the policy of the government was changed, by the proclamations and orders then issued, and I felt it to be my duty, and the duty of every man who loves his country and its free institutions, to oppose any further progress in the direction then taken. I thought then that it was a departure from the line of the Constitution. I believe now that it was; and I am prepared to show to-night that the emancipation proclamation, and those that succeeded it, with the orders based on them, are "Usurpation, Tyranny, and Revolution!" [Cheers and loud applause.]

What is Revolution? If changing the whole system of government—disregarding the judiciary—annihilating the legislative, and placing

the military superior to the civil power—be not Revolution—let it be named. I know that ordinarily we associate with revolution revolt violence and blood-shed; but these are not essential. Violence and blood-shed are not necessary to revolution. When the people rise and depose their rulers, or suddenly and forcibly change their form of government—that is indeed revolution, and generally *reform*. But when the rulers assume powers not conferred—take from the people their heritage—destroy their ancient franchises—and from exercising limited, claim and exercise absolute power, that, too, is revolution, and if submitted to without resistance, is an evidence, not of popular advancement, but of degeneration.

I need but refer, in illustration, to a single instance in history, within the recollection of all. Napoleon the Third was elected a member of the National Assembly, after years of exile, as a result of the revolution of 1848. In December of that year, a President was to be elected for the new Republic. There were numerous candidates; and Napoleon was successful over all. When he entered upon the office, he took an oath that he would "maintain and uphold the Democratic Republic." What then? The Legislative Assembly held its sessions, and the government of the Republic was seemingly faithfully administered, until the President was ready for his *coup d'état*. When that time arrived, what was his first act? A Proclamation for "the arrest of all dangerous persons." This was the first step toward despotism. He followed it by taking possession of the Legislative Assembly, which he accomplished by having first got possession of the military. What next? He issued a Proclamation for the election, by the people, of a "Responsible Chief," and the people of France were made to perform the farce of electing him Emperor, by passing to the ballot box through the bayonets of his soldiers. The people did not resist, because they had not the power; yet this was not the less a change of government, and a revolution! Unhappily, instances are but too numerous in history of such revolutions, while, although they do not go backwards, show that power has advanced, and that the *people* have retrograde. [Loud applause.]

#### "THE FIRST STEP" TOWARD DESPOTISM.

Our government took the first step in this direction when, in 1861, by orders of the Secretary of State, sent by telegraph or otherwise, arrests were made—not through the magistracy of the State. An editor from Suffolk county, near Mountauk, publishing a paper that was read by few, of limited and local circulation, was arrested at the depot of the Hudson River Railroad, while on his way to a Democratic State Convention. This was followed by other arrests of a similar character—by that of Judge Flanders, of Franklin county, of Mr. McMasters of the *Freemen's Journal*, and many others; and more recently by that of the Rev. Mr. Benedict, a Baptist minister, whose offense was the preaching of a discourse from a text taken from

Christ's sermon on the Mount—"Blessed are the peace-makers,"—which the administration and its officers in the State deemed to be revolutionary. Mr. Chairman, our government when it ordered these arbitrary arrests of citizens, took the "first step"; the same as Louis Napoleon did when in the night time, he had a proclamation posted all over the streets of Paris, startling and terrifying the people as they arose in the morning, that all "dangerous persons" should be seized and confined. It is true, that the French President followed this "first step" by another, which gave him control of the military, and by yet another, which placed the Legislative Assembly in his power, so that he was enabled at last to carry out his policy to enslave France and upon the ruins of the "Democratic Republic" which he had sworn to support, to found the Empire, "whose mission is peace."

I trust no such design influences those who are in power at Washington. I trust that the "second step" is not foreshadowed by the removal of McClellan, (loud applause) the hero who freed Western Virginia of the rebels; who took his position at the head of our forces after the first disastrous battle of Bull Run, and made a disciplined army out of an untrained and disorganized militia; who, when reinforcements were withheld from him, led our soldiers through seven days and seven nights of fighting and suffering, until he had placed them in security; who, through political intrigues, was deposed from the position he had filled so well, and only restored to command when the capital was in such danger that, as a Cabinet minister said to me the day the result of the battle of Antietam was known in Washington, "there was more danger from our own army under Pope, lest it should turn on the Capitol, than from the army of the rebels"; who led our forces at Antietam until the Capitol was no longer in peril, and until he was a second time sacrificed to political malignity. I trust, I say, that the "second step" is not foreshadowed in his removal, and in that of those other gallant officers, Buenside, Franklin, Sumner and Porter; and that the military is not thus to be placed at the disposal of the President or his advisers. [Loud applause.]

And here allow me to say that I believe the action of this House to-day in almost unanimously endorsing Gen. McClellan and inviting him to visit the Capitol as the guest of the State, will not only be heard with joy in our own army, but will carry dismay into the camp of the enemy. "Oae blast upon that bugle horn is worth ten thousand men!" With McClellan again at the head of the Union forces, there would be less need of bounties to volunteers; and none for negro Brigades or Brigadiers! I believe, sir, that with such a leader, with the physical advantage we possess—with a powerful Navy at our command—the twenty millions of white men in the loyal States are sufficient not only to conquer the rebels, but to restore the Union, under the Constitution of our fathers, without

looking to Negro soldiers for assistance. [Loud applause.]

Now, Mr. Chairman, we have been told that "Revolutions never go backwards" They do not; but the people do, when they quietly suffer their heritage to be taken away. Have the citizens of this Republic thus proved unfaithful to themselves? They did not resist when their fellow townsmen were arbitrarily arrested without warrant, and imprisoned without examination; but let those who would encroach upon their rights because of this seeming apathy, remember that in Rome, the rape of Lucretia was the knell of the Tarquin dynasty! Why did not our people resist? Because they felt there was a remedy open for them at the ballot box! It was there, through its peaceful but potent voice, that they protested against the invasion of their rights. It was there that they uttered the warning that must not be disregarded! God grant that the calm, though determined protest which the voters of the Northern and Central States have made at the late elections against these assumptions of arbitrary and unlimited powers may be followed by the action of the legislative councils of their respective States—and that thus the national government, while remitting none of its energies in overcoming armed resistance to rightful authority, may at once and forever cease from making war upon personal and individual security and from IS-UI-NG PR-CLAMATIONS TO ABOLISH THE CONSTITUTION. [Loud applause.]

#### THE PROCLAMATIONS AND THE ORDERS OF THE WAR DEPARTMENT.

In speaking on this subject, viz:—that the proclamations which I have indicated, and the authority assumed and exercised are not only palpable violations of the fundamental law but if submitted to, destroy our government under the Constitution. I mean to speak calmly and deliberately, and use the same arguments that I would employ were I before that august tribunal, the Supreme Court of the United States, in a case involving the validity of any executive or legislative act. I shall denounce no individual, nor impeach the motives of any public officer—from the President to the humblest tip-staff who executes these arbitrary decrees.

The Federal government is not only one of limited and derivative powers, but—"The powers not delegated to the United States by the Constitution, nor prohibited to the States are reserved to the States respectively, or to the people" That is the language of the tenth amendment of the Constitution. The powers delegated are not to one person, or to one class of persons or officers—but to a Trinity. This Trinity is Legislative, Executive and Judicial, and united, constitute the Government of the United States. Each has its separate functions, and an assumption by one department of the powers of the other, is usurpation. I claim that the President, in the present unhappy state of affairs, has attempted to exercise the whole of these powers, and that such exercise is "revolution."

What says the Constitution? "All legislative powers herein granted shall be vested in a Congress of the United States."

"The executive power shall be vested in a President of the United States."

"The judicial power shall be vested in one Supreme Court," &c. (Con. U. S.)

Each department is thus not only distinct from but independent of the other.

I know that there is an attempt at criticism on this point, on the ground that the word 'all' is used in the grant of legislative power, and the word 'the,' in that of the Executive power. The same article 'the' is used in the grant of Judicial power. But will any lawyer say that 'the' Judicial power, does not include the whole of the Judicial power? When the Constitution provides in the article containing the grant of Legislative power that the writ of *habeas corpus* shall only be suspended in certain exigencies, and when the suspension of the writ is provided for by Legislation only, and when all legislative power is given to Congress, how can the President, as a portion of the Executive power, perform a legislative act? If it can be shown that any Executive power is given by the Constitution to any other than the Executive; or any legislative power is given to any other than the Legislature; or any Judicial power given to any other than the Judiciary, then I will yield the argument; but until that I insist that each department has a full grant, and that such grant is exclusive of the others.

We have, then, three departments in our government, designed to be distinct one from the other, and no one of these departments has the right to exercise any of the powers belonging to either of the others. Of all these, the Executive power is that which most needs to be jealously watched. The Legislature has only power to make laws—it cannot see to their enforcement or decide upon their constitutionality. Here in this House, our power as a Legislature ends. We as legislators can do nothing outside this Chamber. When we have sent forth a law we have no further part in its enforcement. In like manner, the Supreme Court may render judgment, but it cannot execute it. Its execution belongs to the other branch of the government. The history of the world proves that it is the Executive power which generally stretches its attributes and destroys or controls the Legislative and Judicial,—because it is the nature of power to develop itself, and necessarily that branch of the government, which executes its decrees and appoints the persons to do so, is strengthened in its exercise. All the revenues of government and the sword of magistracy centre here; hence this power is the one which ordinarily swallows the others. We all know the history of the Tribunes of the People, and the transition of governmental functions into the hands of a single dictator; of the Consuls of France, after the revolution of 1789, terminating in the despotism of the first Napoleon; of the Third Napoleon, who after swearing to uphold the Democratic Republic, became Emperor and is now the most absolute monarch in

Europe. The Federal Government, whose powers are derived from the States, which powers at the adoption of the Constitution were regarded as very limited, is now attempting to exercise unlimited and arbitrary powers; powers, which, but a few years ago were not claimed for it by any party or person. Let us beware lest the next step downwards, if we submit now, should entail upon us a Dictator under the title of Abraham the First—a result already forestadowed by his leader in the House of Representatives. Mr. Stevens, who by virtue of his position as Chairman of the Committee of Ways and Means, holds the purse strings of the Nation, has declared that we have the right to make a Dictator, under the war power—a power that has been invoked here several times during the last ten days. His language is this: "If any unforeseen emergency should arise endangering the existence of the Republic, the section of the Constitution which says, 'that the President shall take care that the laws be faithfully executed,' creates him as much dictator, for the time being, as a decree of the Roman Senate made a consul dictator. But when Congress assembled they would have the same full powers. If no other means were left to save the republic from destruction, I believe we have power under the Constitution, and according to its express provision to declare a dictator, without confining the choice to any officer of the Government."

This startling announcement is from the leader of the administration party in Congress; and I may add that the course justified by him has been proposed more than once by a leading journal in New York, an influential organ of the same party.

I now desire, Mr. Chairman, to examine the proclamations and orders to which I have referred; trusting that in speaking of them, I may be able to rise to the height of the great argument involved, and that no party considerations will draw me from discussing them calmly and deliberately. I trust I have too much patriotism—too much love for my country, to use this grave subject for the purpose of securing an advantage to my own party, or making a point against my political opponents.

It will be borne in mind that after some arrests had been made, Congress met in extra session, on the Fourth day of July, 1861, and adjourned, without any legislation in relation to such arrests; and that the following Order of the War Department, was issued on the eighth day of August 1862, after the regular Session which terminated during that summer:

WAR DEPARTMENT,  
Aug. 21st, 1862.

ORDERED:—First, That all United States Marshals, and Superintendents, and Chiefs of Police, in any town, city or district, be, and they are hereby authorized and directed to arrest and imprison any person or persons, who may be engaged by act, speech or writing, in discouraging volunteer enlistments, or in any way giving aid and comfort to the enemy, or any other disloyal practice against the United States.

Second, That immediate report be made to Major C. L. Turner, Judge Advocate, in order that such persons may be tried before a military commission.

(Signed) ED. M. STANTON, Sec'y of War.

Mr. Chairman, I would like to know from any lawyer on this floor who is familiar with the science of criminal law—in what volume of any book it is made a crime to "discourage volunteer enlistments?" or what is a "disloyal practice," and by what authority a *Military Commission* is appointed? And yet in this Order it is made a crime, and the person suspected of it is to be subject to arrest by any U. S. Marshal, or any Superintendent or Chief of Police.

Following this, on the same subject, is a Proclamation by the President, dated September 24th, 1862—issued two days after the Emancipation Proclamation, and designed, no doubt, to intimidate the country into the endorsement of that policy and to prevent opposition to it—which reads as follows:

"Now, therefore, be it ordered,—

"First, That during the existing insurrection, and as a necessary measure for suppressing the same, all rebels and insurgents, their aiders and abettors, within the United States, and all persons discouraging volunteer enlistments, resisting militia drafts, or guilty of any disloyal practice, affording aid and comfort to the rebels against the authority of the United States, shall be subject to martial law, and liable to trial and punishment by courts-martial or military commission.

"Second, That the writ of *habeas corpus* is suspended in respect to all persons arrested, or who are now, or hereafter, during the rebellion shall be, imprisoned in any fort, camp, arsenal, military prison, or other place of confinement by any military authority, or by the sentence of any court-martial or military commission.

It will be seen from this Proclamation that citizens are to be arrested for "any disloyal practice." What is that? Is it defined in any book or criminal law—and if not what is the definition?

Mr. DAVIS, of Tioga:—it is giving aid and comfort to the enemy.

Mr. DEAN:—I shall come to that subject hereafter; but I ask the gentleman from Tioga, when he discusses the Governor's message, to tell me, and to tell the people of the State, in what book he finds defined the crime of "discouraging volunteer enlistments," or a "disloyal practice." The crime of giving "aid and comfort to the enemy" is defined, and we shall examine presently what that is; but will the gentleman also tell me by what authority civilians are ordered to be tried by Military Commissions?

If these are crimes, then "the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and District wherein the crime shall have been committed." Is not this provision of the Constitution, violated most glaringly by the Order and Proclamation I have read, and the action of the Administration under them? We come now to the Emancipation Proclamation of the President, which was issued on the 22d of September 1862. I quote its language:—

"That on the first day of January, in the year of our Lord one thousand eight hundred and sixty-three, all persons held as slaves within any State, or designated part of a State, the people whereof shall then be in rebellion against the United States, shall be then, thenceforward, and forever free; and the Executive Government of the United States, including the

military and naval authority thereof, will recognize and maintain the freedom of such persons, and will do no act or acts to suppress such persons, or any of them, in any effort they may make for their actual freedom."

#### THE WAR POWER.

This proclamation has been defended by the friends of the Administration on this floor, not upon the ground that it is in conformity with the Constitution, but that is a proper exercise of the "war power," which justifies it as a means of "*weakening the enemy*." I propose to see what foundation there is for this position. The gentleman from Tioga, (Mr. Davis), and others upon this floor, are old enough to know that slavery as a political question and its bearings on the State is not new; that it has been agitated for the past thirty years; and that they who first advanced the proposition that slaves should be freed by Congress were mobbed in the streets. Notwithstanding that, they continued to appeal to the moral sentiment, which influenced so many, that "the argument that man could not hold property in man," was controlling with a large portion of the people. During all these thirty years of agitation the general impression prevailed that the people of the States where slavery existed were sleeping on a volcano; that the slaves were a constant source of fearful danger. I recollect when Fremont was a candidate for the Presidency of the United States, I expressed the belief upon the stump that in case of his success, the South would secede. I was met by the cry, "where will they go? They cannot take care of themselves! They dare not go out of the Union!" I recollect reading in the *N. Y. Tribune* and other journals of a similar character, time and again, articles written to prove that slavery was the weakness of the South, and that if no other consideration could be effectual, the danger from this source would prevent secession. When the Tweedle Hall Convention met in this City, for the purpose of endeavoring to avert the evils of civil war and all the horrors that have since come upon the country, one or two public journals attacked that body as "Hartford Conventionists," and as "Peace Men," and said that "the South could never be driven into secession, for she had within her borders her own most dangerous enemy." I read from the words of one who was among the earliest advocates of Emancipation, who desired to effect it by political parties, and who, different from many others who sought to use it, *believed in it*.

"Let Southern men dissolve this Union if they dare; Slavery would then take care of itself, and its masters too; in one little month both would become extinct. No! oh, deceived Northerners! the Southern man will be the last to dissolve this Union; by it he expects to enjoy his slaves; without it, he cannot, one day but the wily politician of the South has discovered the ghost that never fails to frighten the North, and the North has been kept in a political sweat for the last ten or twelve years,

for fear the men, who could not exist as slaveholders without this Union, would dissolve it."

These, and similar opinions, were expressed by Republicans before the last Presidential election, and before secession had become a reality. Now what do we find? After eleven States, all slave-holding, have seceded from the Union and separated themselves from the protection of the Federal government, we are told that the President must avail himself of the "war power" to emancipate the slaves, because slavery is the chief element of strength to the rebels—because the slaves stay at home, taking care of the women and children, and raising the crops, while the fathers and brothers and stalwart men among the whites, go forth to fight the Union armies. Before election, they told us that slavery was an element of weakness to the South, and a safeguard against secession. Since election they tell us it is the pillar of its strength, and for that reason that the President is compelled to set the slaves free by Proclamation, and is justified in arming these semi-savages, and permitting them to use the knife against the women and children. It is time for gentlemen, who have so completely and so quickly changed front, to pause in their course. I do not envy them the position in which they are placed by this policy.

The Emancipation Proclamation—a measure not resorted to by the English in our own revolution, or in the war of 1812—is justified by the friends of the administration, as a "war measure." In what point of view can it be so regarded? What is a "war measure?" It is a measure to raise men, money, or munitions, to be used against the enemy, or to weaken his power. It must be one or all of these, or it is not efficient as a war measure. Does the Proclamation answer to this description? Is it a "war measure" that encourages enlistments—a "war measure" that supplies the government with money—a "war measure" that gives the Nation, adopting it, power and influence at home or abroad? I have endeavored to obtain from the office of the Adjutant General of the State, some evidence of the effect of this "war measure," which the Governor of Massachusetts promised would crowd the highways with volunteers eager for the scene of conflict; and to which a leading editor pledged "three times three hundred thousand men." How many new regiments, think you, have been organized in this State since this Proclamation was issued? ONE! While the State of New York has sent to the war two hundred and twenty-five thousand troops in all, she has organized but a single regiment since that most effective "war measure" of the President was issued! How many "war measures" of this description shall we require to conquer the rebels' armies? (Loud and continued applause.)

Again, sir; has any body made a loan to the government in consequence of this Proclamation? When the war was commenced, and Congress passed a resolution unanimously, declaring that it should be prosecuted only for the restoration of the Union and the preservation of

the Constitution, and when the President announced his adhesion to this policy, even the miser relaxed the hold upon his hoarded treasure—the wife sent her husband—the sister yielded up her brother—the maiden her lover to the war, and our young men rushed forth to die on the field of honor, of glory and of duty. How has it been since the date of the Emancipation Proclamation? Can the government obtain a loan in New York—or in Boston? Have men been furnished freely for the war? Has money been poured lavishly into the Nation's Treasury? Let the events of the five months past supply the answer.

In what manner has the Proclamation given the Nation power and influence at home or abroad? Has any prominent paper in France or England approved of its policy? Has it assured unity among the loyal citizens here? I tell you that in this struggle the moral power is as important as the physical. It is an error to regard soldiers as mere pieces of mechanism.—*Bayonets think!* The men who press them forward have hearts and brains; and if you tell them that this war is to be perverted from the object for which it was undertaken, and that it is now to be prosecuted for the purpose of making eleven States, as fair and as fertile as any of the thirty-four, a jungle like those of Africa, or of converting the whole region of the South into a Goleotha of the white race for the imaginary good of creating there a Paradise for the negro,—then the thoughts at the ends of those bayonets will turn them back, and the soldier will ground his arms, as he fixes his eyes, dimmed with tears, on the soiled flag of National Unity. I ask you to make enquiry of the returned volunteer who, wounded on the battle field or stricken by the malaria of the camp, returns to his home a broken and suffering man—ask him if you could induce him to go into this war for the extermination of the white men of the South, and the enthroning there a negro power. Sir, we are not a degenerate race. In every quarter of the globe where the American white man penetrates, he takes the lead in art, in civilization, in everything that ennobles humanity. The foot of Livingston has pressed the sands of Africa, and his researches have done more to develop its resources and acquaint the world with the character of its soil and inhabitants, than all its natives have done in six thousand years. I need not refer to Morse, to Ericsson, and the great crowd of witnesses who can attest the same fact—that progress is with our race—while the African is necessarily dependant, and that never has the negro race been capable of supporting a civil government. I ask this administration and its friends to reflect upon these truths and to enquire of themselves if it is not time to pause in their career; to retrace their steps; to reverse their present policy, and to declare that in the future this war shall be prosecuted, not for the purpose of interfering with the institutions of any State, but to restore the Union, and spread the shield of the Constitution over every State



and Territory, and over every citizen of every State! (Enthusiastic applause.)

#### IMPRACTICABILITY OF THE PROCLAMATION.

But, Mr. Chairman, there is another view of this subject which is, in my judgment, quite as convincing as the other—and that is, the *impracticability* of the Proclamation. Can slavery be abolished by proclamation of the President? I suppose there are many who would rejoice to see the whole continent free, but of such I ask, can slavery be abolished by a written Proclamation? Suppose we say that the Proclamation is a law. What is law? It is nothing more than the condition of existence, a declaration of the natural state. This is true both in nature and society. Murder was as much against law when Cain stained his hands in fraternal blood as after the revelation of Sinai. When Newton published the law of the Celestial Sphere, he altered nothing; he only declared the condition which the Creator had affixed to their existence, and which had governed their movements since the morning stars first sang together. When Gallileo on his knees proclaimed that the earth was stationary—did its rotation cease? Can you, by proclamation or solemn legislative enactment, abolish the instincts of the sexes—the natural affections, or the relations of parent and child? As well, by proclamation, change the course of the cataract or the laws of gravitation!

In all countries the laws are only the reflection of society; they necessarily grow out of, and are shaped by it. If, by any means, the members of the State become demoralized, less enlightened, and more selfish, the law will retrograde in the same proportion. So on the other hand every new invention, every advance in the arts, and in physical science every application of the powers of nature to machinery—every discovery that lightens labor, aids in the great movements of the world towards social elevation. The teacher of morality, whether occupying a pulpit, presiding over a press, in the seat of the judge, or in the legislative hall, whether filling a public station, or discharging the duties of a private citizen—does his appointed work in elevating the race, and consequently aids in producing a reform in the laws. One will follow and be shaped by the other, as surely as the shadow is formed and shaped by the substance. A law in advance of society, is misunderstood or disobeyed; while one behind the age, is disregarded or evaded, and becomes practically obsolete.

What makes the trial by jury a blessing and not a curse? What renders safe the decision of a cause, upon the testimony of witnesses?—it is only the elevation society has here attained—it is the results established in the popular mind by the efforts of the moralists, the instruction of the scholar, and the devotion of the christian. To give to the Turks a constitutional republic—a representative government, and the trial by jury, would be a benevolence similar to that which would give to the inmates of a Lunatic Asylum the indiscriminate use of fire-arms.—

The gift would be turned against the life and happiness of the beneficiary. The idea we desire to enforce is strikingly illustrated by the difference between the condition of things here and in the Republic of Mexico, or the Central American States. There the people enjoy, nominally, a representative government; yet owing to the condition of society, life and property are the sport of the mob, or held tributary and at the mercy of a military despot.—Laws; what are they in such a community?—The merest cobweb to restrain a bursting flame; the drooping willow to impede the rushing torrent. The people, their habits, their feelings, their morals, determine the condition of society, and hence the laws.

Suppose, Mr. Chairman, that instead of issuing his Proclamation of Negro Emancipation, the President had declared that all white persons in the eleven seceded States should be freed from such contracts and bonds as nature and society had placed upon them? Suppose he had said that all wives should be liberated from the control of their husbands; that all children under 21 years of age should be regarded as having reached their majority and should be entitled to act for themselves. Of what force would be such a proclamation? As well abolish, by a stroke of the pen, all distinctions of color, or by proclamation add intelligence to the ignorant, and elevate the morals of the vicious.

We are asked, Mr. Chairman, before condemning or dis-carding, to give this Emancipation Proclamation a fair trial. Has it not been done? It is now nearly five months since it was issued, and is slavery abolished in Virginia beyond the lines of our army? Is it abolished in any other State, or has the relation between master and servant been changed? And here let me say that I must not be misunderstood. If slavery is abolished within our lines, as a consequence of the advance of our armies, and not as the *object* of the war, I am content. But when I see that this Proclamation has not been effective at the North; that it has not caused volunteers to crowd our ranks; that the promised thrice three hundred thousand yet remain at home; when I see that it is inoperative at the South, for no slave has been liberated by it; that its only result has been to unite and fire the Southern mind—to nerve its arm to more determined resistance, and to distract and divide the North; I think that we have given it a fair trial; that it is a failure; and that the whole people should unite in writing upon it, "*Jehabod.*"

#### NEW ENGLAND—ON RELIGIOUS TOLERATION AND THE SLAVE TRADE.

Mr. Chairman, I have finished this portion of my argument; but I desire, before entering upon the question of arbitrary arrests, to allude briefly to one subject which I wish the gentleman from Essex had not brought into this debate—I refer to his eulogium on New England as "the land of civil liberty and toleration." My college education was in New England. I love my

*Alma Mater*, and I have friends and relatives who reside in the New England States. But I am here, a representative in the Legislature of New York—myself a native of the State, with the blood of the Knickerbockers in my veins, attached to her institutions proud of her honored history—the State which surrendered more than any other in adopting the Federal Constitution—the State which did not threaten secession in the war of 1812 and I cannot allow the remarks of the gentleman from Essex to pass unnoticed. I read from his speech, in which he thus lauds New England:

The only offense which can be charged against her, is her unflinching devotion to freedom and constitutional law, and her eternal hatred to slavery, oppression and treason. She will not consent that one jot or tittle of the Constitution and charter of liberty she did so much to establish, shall be bartered away in an unholy compromise with the rebels in arms.

For this, the malice and spite of the slave power at the South, and its sympathizing friends at the North, is now showered upon her without stint or measure. But all will be of no avail, the winds and waves could as easily shatter her rock-bound coast, as this torrent of threats and abuse, sweep her from her position; and God grant that she may ever remain the impregnable citadel of American Liberty.

She needs no eulogy from me. The successive waves of her population, have carried the virtues, the intellect, and the enterprise of New England, over every rod of free soil in this Union.

Brightest upon the page of our country's history, stands her literature, her arts, and her triumphs in science.—The Goddess of Liberty reigns supreme among her granite hills; yet virgin soil is not polluted by the foot-print of the slaveholder, nor is the crack of the driver's whip heard, either in her solitude, or peopled cities.

Does the gentleman from Essex—I know not what may be his place of birth, but he has brought New England before this Legislature and sought to exalt her over the people we represent—does the gentleman know that the first settlers in New England came over in the *May Flower*, which was immediately after the landing of the pilgrims, appropriated to the slave trade? I read from the *Atlantic Monthly*, a periodical published under the shadow of the Bunker Hill Monument, in Boston, the chief city in the "impregnable citadel of American liberty!" The July number, 1862, contains the following:

"There is an historical circumstance known to few, that connects the children of the Puritans with these Africans of Virginia, in a very singular way. They are our brethren, as being lineal descendants from the *May Flower*, the faded womb of which, in her first voyage, sent forth a brood of pilgrims upon the Plymouth Rocks, and in a subsequent one, spawned slaves on the Southern soil—a monstrous birth, but with which we have an instinctive sense of kindred, and so are stirred by an irresistible impulse to attempt their rescue, even at the cost of blood and ruin. The character of our sacred ship, I fear, may suffer a little by this revelation; but we must let her white progeny offset her dark one,—and two such portents never sprang from an identical source before."

I would refer the gentleman to another fact, which he has probably overlooked, in relation to New England and her "eternal hatred to slavery and oppression." In the church of the Puritans—a theocracy as it was—the favorite doctrine was, that "the earth was the Lord's and that the heathens were his inheritance"—and they, being the "children of the Lord," and consequently "heirs," were entitled to seize the lands of the heathen Indians, and to sell

the red-skinned possessor into perpetual slavery. They therefore bound the Indians and sent them from "the impregnable citadel of American Liberty," down to the Carolinas to be sold as slaves. It is probably this historical fact to which the gentleman from Essex alludes, when he remarks that "the Goddess of Liberty reigns supreme among her granite hills!" It is worthy of remark that the first will made in New England bequeathed Indian slaves, and the testator, if my memory is correct, come over in the *May Flower*! (Applause.)

I do not stand here, to discuss the question of slavery in Massachusetts. The State has improved in its character, and I am glad of it; for no State in the Union needed it more or needs it now, so much. But I desire in this connection to refer to one fact; that in the formation of the Federal Constitution, when the proposition was before the Convention to limit the duration of the slave trade to the year 1800, it was defeated by the votes of Massachusetts, Connecticut and New Hampshire, while Virginia and Delaware voted in its favor.—The foreign slave trade was thus legalized for eight years longer by the votes of these three New England States—another evidence of "unflinching devotion to Freedom, and eternal hatred to Slavery!" The gentleman from Essex refers also to the "virtues" of New England, which have been carried "over every rod of Free Soil in the Union." He undoubtedly includes among these "virtues" the Main Law, which there had its origin. But does he forget that when it was profitable to make and sell Rum, its manufacture and traffic were New England's chief source of wealth? I refer to Minot's History of Massachusetts as to the charge in Parliament against these colonies. The charge, which will be found in the second Volume of Minot's History, page 148, is thus stated:

"As the same session of Parliament came on the complaint of the West Indian sugar plantation against the southern Colonies."

This complaint was for carrying on an illicit or contraband trade with the French.

The following are extracts from Minot's history of Massachusetts, showing how Flags of Truce were used, and that Rum and Slaves were among the staple articles of Massachusetts commerce.

I quote extracts from pages 149 to 158:

"This general charge was detailed in several particulars, and was as particularly answered by the agent for the Massachusetts Bay as it respected that Province; though it should be observed, that Rhode Island was considered as the principal aggressor. It was alleged that the trade was carried on in foreign bottoms, contrary to the act of navigation, and under colour of flags of truce, both of which charges were denied, and the latter retorted upon the Sugar Colonies; but the evidence of this was too positive, as it respected some of the parties concerned, to be easily diverted."

"These particular objections being answered, the utility of the rum trade to this Province was shown by such a thorough investigation of it in the various dependencies, as deserves, we think, to be literally extracted from a state of the case, since it affords the most satisfactory commercial history of the period which we are now speaking of that perhaps can be obtained."

"Rum is the chief manufacture; there being upwards of 15,000 hhd. of rum manufactured in the Province annually."

"The Rum carried from Massachusetts Bay and the other Northern Colonies; to the Coast of Guinea, is exchanged for gold and slaves. The gold is sent to London, to help to pay for their annual supplies; and the slaves are carried to the English Sugar Colonies, and exchanged for the commodities, or sold for bills of exchange or Great Britain!"

Mr. Chairman, New England has abandoned the Rum traffic and the Slave trade. But may we not suspect, when we mark her present greed of gain indulged in at the expense of a dying nation, that she has abandoned them only because they are no longer profitable? It will become her descendants to forget these facts in her history, particularly when they have emigrated from her limits, and become citizens of other States! [Loud applause.]

I respect New England for her progress in the arts—for her liberality in the cause of education—for her industry, her economy and her enterprise. I respect her as the birth-place of scholars and of statesmen; as the home of Webster, who so long represented her in the Senate of the United States, and whose great effort for the Union in the celebrated debate on nullification is embalmed amongst the classics of the English language; and who when he saw the danger which surrounded the country from the fanaticism of his own section, and denounced it on the floor of the Senate, on his return to his constituent, whose idol he had been, when Faneuil Hall was closed against him, and when the men who had caressed him met him with averted faces or scowling brows, mounted a platform in the street, and instead of apologizing or attempting to excuse his course, gave utterance in his deep toned and impressive voice to these memorable words—"MEN OF MASSACHUSETTS! YOU MUST CONQUER YOUR PREJUDICES!" [Tremendous applause.]

The great Statesman, by rising above the prejudices of his section, and embracing in his view the interests of the whole Union, has linked Marshfield, with Monticello, the Hermitage, Ashland and Mount Vernon. It would be well for the eulogists of New England on this floor to remember the golden words of her giant mind—"you must conquer your prejudices!" Yes, Mr. Chairman, while we respect New England for what she rightly is, this is no time to eulogize her for her extreme opinions; for the country cannot forget that the agitation of these opinions has been the pregnant mother of our National troubles. [Renewed applause.]

A single word more on this subject. I desire to quote from a work by the Rev. Mr. Ward, to show that the whole government of Massachusetts has been that of a Theocracy. The writer to whom I refer, was one of those who made the Massachusetts Code; an eminent divine, who was endorsed by Cotton Mather in the strongest terms; and the following extracts from his book will show how much the country owes to New England for religious toleration; how much those who fled from religious persecution in England did to secure civil and religious toleration on this continent. I com-

mend to their descendants as a contrast the example of the Catholics of Maryland and of the Dutch settlers of New York.

Says the great oracle of Toleration, the Rev. Mr. Ward:—

"My heart hath naturally detested four things; The standing of the Apocrypha in the Bible; Foreigners dwelling in my country, to crowd our native subjects into the corners of the Earth; Allynymed sin; To erration of divers Religions, or of one religion in segregant shapes. He that willingly assents to the last, if he examines his heart by day light, his conscience will tell him he is either an Atheist or a heretic, or an Hypocrite, or at least a captive to some lust; Polygistry is the greatest impiety in the world. True Religion is ignis probationis, which doth congregare homogenea and agregare heterogenea.

I dare take upon me to be the Herald of New England so far as to proclaim to the world, in the name of our Colony, that all *Fanilists, Antinomians, Anabaptists, and other Enthusiasts*, shall have Liberty to keep away from us, and such as will come, to be gone as fast as they can, the sooner the better.

Secondly, I dare aver, that God doth no where in his word tolerate Christian States, to give Toleration to such adversaries of his Truth, if they have power in their hands to suppress them.

There is lately brought us an extract of the *Magna Charta*, so called, compiled between the sub-planters of a *West Indian* Island, whereof the first article of Constitution firmly provides *free stable-room and litter for all kinds of consciences*, be they never so dirty or judish; making it actionable, yea, treasonable, to disturb any man in his Religion, or to discommend it, whatever it be.

And in this connection I cite the sentiment of the same author, representing Massachusetts, on the subject of foreign immigration and national brotherhood—not that he is the progenitor of the men of the "dark-lantern" or "know nothing" faith:

#### "A WORD OF IRELAND."

"These *Irish*, anciently called *Anthropophagi*, (man-eaters,) have a tradition among them that when the Devil showed our Saviour all the kingdoms of the earth and their glory, that he would not show him *Ireland*, but reserved it for himself; it is probably true, for he hath kept it ever since for his own peculiar. The old Fox fore-saw it would eclipse the glory of all the rest; he thought it wisdom to keep the land for a boggar for his unclean spirits employed in this hemisphere." [Loud laughter and applause.]

#### ARBITRARY ARRESTS AND THE HABEAS CORPUS.

Now, Mr. Chairman, I shall leave this part of the argument, and devote a very brief time to the important subject of "Arbitrary Arrests," which has been brought before the Legislature in an independent form, in the resolutions introduced by myself, for a Committee of Investigation into the abuses of the system; but which has been coupled with the present discussion by the gentleman from Essex, (Mr. Havens,) in his remarks before the Committee of the Whole.

When the history of this war shall be written, no matter what may be its result, the darkest page will be that which records the action of our Government, in arresting in loyal States, States which were yielding men, money, munitions and every moral and material aid to the Union, and that voluntarily, not by levy, or conscription—citizens for supposed or real offences without warrant, hurrying them to Forts, to Military prisons, either within or without its borders, refusing to give them a hearing, or to inform

them of their accusation or the accuser, and that too when all the Courts were open, the Judges on the bench, the Justices of the Peace in their places, the officers of the law discharging their several duties, and when civil and criminal process was issued and returned as usual, and when full obedience was yielded to each by every citizen. I ask gentlemen upon this floor, if there has ever been a time since the outbreak of the rebellion when the courts of New York were closed, or when there has been any attempt to resist the thorough execution of process, or to prevent a fair trial?

The American Annual Cyclopaedia says, on this subject, under the title of *Habeas Corpus*: "The eloquence and pleading of our great profession have been lavished upon this process as constituting the great bulwark of individual freedom. During the year a great number of citizens have been arrested without legal process of law, and the order for the bodies of these prisoners were denied them as a result of *habeas corpus*, the writ of which was refused. . . . . While it is becoming evident that the great bulk of the arrested citizens, and refuse the writ of *habeas corpus*, constitution seized the process."<sup>1</sup>

This is the language of the *Constitution* seized the writ of *habeas corpus*. What were the public thus alarmed? In the first place, the people had been misled by the Government, between arbitrary process and imprisonment. Even the declaration of *Nullius in terra regnat* had been found insufficient to satisfy the Legislature, 200 years ago, and the *Constitution* writ, known as the writ of *habeas corpus*. And when that writ had been refused by our Fathers, but had been refused by our Government in the Federal Constitution, which had been enjoyed in times of law and order and Peace, it is not surprising that it is to obey it created "Constitutional" writs. Some of the persons arrested and imprisoned, and whose bodies were denied the Writ of Freedom were denied the writs of the State of New York. Our physicians were used, and our officers employed, to implement, in such unlawful arrests.

Alliance and protection are refused.—No subject is bound to obey when his rights are not afforded protection. If our citizens are being wronged, those wrongs must be resisted, and we only can do it. We might, we should do it; or we should resign our citizenship. The question first to be determined is as to the right of the President, or the Executive Department of the Government, to take direct action and hold in defiance of the Constitution and the Laws. I am not now speaking of acts made by military officers within the laws of our armies, or of the arrest of soldiers who are, by express provision, subject to military law; but of citizens of this State, engaged in their ordinary pursuits, in their homes—when the courts are open—process is issued and returned—and when all the officers of the law are discharging their legitimate functions.

As another reason why the public mind was alarmed by this most extraordinary assumption of power by the Executive, I have only to say that while no judge and no court has intimated an opinion in favor of the right of the President to suspend the writ of *habeas corpus*, I have the highest authority of the courts for denying any such right. In the case of *Merriman*, Chief Justice Taney decided as follows:

1st. The President, under the Constitution and laws of the United States, cannot suspend the privilege of the writ of *habeas corpus*, nor authorize any military officer to do so.

2d. A military officer has no right to arrest and detain any person not subject to the rules and articles of war, for an offence against the laws of the United States, except in aid of the judicial authority, and subject to its control; and if the party is arrested by the military, it is the duty of the officer to deliver him over immediately to the civil authority, to be dealt with according to law.<sup>2</sup>

Judge Hall, in the case of *Rev. Mr. Benedict*, says:—

"The deliberate opinions of Marshall, and Story, and Martin, and of the other Justices of the Supreme Court, were concurred in the opinion of their chief. In the case *Bullman and Swartwood*, (4th Cranch, 75,) supported as they are, in my judgment, by unanswerable arguments, are decisive of the question and constrain me to decide that the President, without the authority of Congress, has no constitutional power to suspend the writ of *habeas corpus* in the United States."<sup>3</sup>

I cite no other authorities now, because I deem these to be sufficient on this subject. What, then, is our condition in reference to arbitrary arrests, and what wonder that the people of the loyal North were seized with consternation when they heard that the President had disregarded this writ of freedom, had subverted the constitution, and proclaimed his will as the "supreme law of the land"? The Bastille of France, after standing as the synonym of despotism for five centuries, was attacked by the people in the revolution of 1789—the great ditch surrounding it was crossed—its walls were scaled and demolished, and the people who entered its cells found engraven on its walls, by one who had occupied its dungeons fifty years before, these prophetic words:

"The Bastille shall be destroyed, and the people shall dance on the area where it stood." It is a singular coincidence that the key of that noted prison was brought here by Lafayette, and presented to Washington, as a trophy of popular triumph over despotic power, and by Washington deposited at Mount Vernon, where it yet remains; and that a fortress erected in New York Harbor, to defend the State, named Lafayette, in honor of that apostle of Liberty, should be the first place of imprisonment selected by this Administration for citizens arrested without law, so that "Fort Lafayette" is now known the world over, as the "MODERN BASTILLE!" [Loud applause.]

I ask gentlemen to read the causes of the revolution of 1688, which dethroned James the 2d and inaugurated the reign of William and Mary. The principal cause of that revolution was the attempted repeal, or disregard by King James, of the writ of *Habeas Corpus*. But although that despotic monarch desired to sus-

pend, or disregard the writ, he had not the power to do it. The most notable proof of this is found in the historical fact, to which I now refer. The King had a mistress named Mrs. Sedley, whom he desired to discard, and to remove from England. I quote from Macintosh: volume second, page 61

"James sent Lord Middleton, one of his Secretaries of State, to desire that she should leave Whitehall, and go to Holland, to which country a yacht was in readiness to convey her. \* \* \* she retired to her house in St. James Square. \* \* \* protested against going to the Continent, where means might be found of imprisoning her in a convent for life. When threatened with being forcibly carried abroad, she appealed to the Great Charter against such an invasion, of the liberty of the subject."

Yes! this feeble woman, the creature of the king's pleasure, returned to her own house— which, by the law of England, is a castle whose walls, whether of stone or of wood, are a protection against the power even of the monarch, and appealed to the Great Charter against such an invasion of the liberty of the subject; and the royal prerogative of King James was in vain invoked for her removal from the realm. What could not be done in England two hundred years ago even by order of the king, can be done now without resistance in this Democratic Republic, and that, too, on the mere fiat of a clerk or a policeman. And this is done where the Constitution guarantees liberty to all white men, and where a powerful party at the North, not content with this, is endeavoring to pervert a war undertaken for the preservation of that Constitution, into a war against the domestic institution of the Southern States, so that at the expense of that Constitution, it may secure freedom for the Black race too; and who are willing for this purpose to surrender the rights of all white citizens. I say, Mr. Chairman, this is done without resistance; but it is only because the people have trusted to the ballot rather than to the bullet or the bayonet. But they have now spoken. The peaceful remedy has been sought by them, and their will is known. If it is disregarded; if the popular voice, peaceful but powerful, is unheeded, and again outrages are attempted upon loyal citizens I tell you, sir, and you gentlemen of the Committee, there *will* be resistance, and there *should* be resistance, even though it lead to revolution. [Loud and enthusiastic applause.]

#### THE PLEA OF NECESSITY.

There has been no attempt Mr. Chairman, to defend the course of the Administration upon Constitutional grounds, or by any written law, but it has been justified on the plea of "necessity." We are told that a great rebellion is facing us—that an enemy whom our white troops cannot conquer is in the field, and that there is a "necessity" for these arbitrary proceedings. "NECESSITY" is always the plea of tyrants—it knows no limitation except the will of him who makes it, and he who acts upon it takes the responsibility of accounting to man and his Maker for its exercise. The gentleman from Chenango (Mr. Prindle) says, "must I

not defend myself—must I not defend my wife, my child or my servant if they are attacked, and take life in their defence?" Yes; but the law says that when attacked, before you resort to the ultimate first law of nature, you must use every other means within your reach. You must "retreat to the wall," and only strike when no other means of retreat is left. If a man threatens violence against you, or you suspect he is going to commit it, are you to draw a revolver and shoot him down? Such would be the course justified by the argument of the gentleman from Chenango, but such is not the course marked out by law, or by reason, by the law of man or the "higher law" we all respect.

Again, we have been asked, "if a building were on fire, would you not blow up the adjoining ones, if necessary, to put a stop to the conflagration, and prevent the destruction of the whole city?" Yes, but if the Capitol at Washington were on fire, I would not wantonly blow up the Cathedral, the Albany. I would do what necessity law demanded. I would destroy, if necessary, the buildings on the spot, or contiguous to the place where the fire was raging, but not those at a distance, where the flames cannot reach, and where all around is in security. Our troops recently bombarded Fredericktown; but when this was required to weaken the enemy, would the government be justified in bombarding or burning New York or Boston? What we confine ourselves to the necessary destruction of the cities of the enemy, we are justified in the eyes of the world, and by the law of nations; but when we turn our guns, on any pretended plea of "necessity," against a city not in hostility, but friendly or neutral, we ought to meet with resistance, and that resistance is justified in the eyes of God and man. But more; that we Nations of humanity and religion condemn us for. And can you tell me, Sir, that in the great State, that has given more to any other in men and money for the war—that has proved its loyalty by the blood of its bravest—that has yielded its treasure without counting the sum—any "necessity" for the arbitrary arrests and kidnapping of citizens, and if any of any line, could be tried in the Courts, or punished under the law? I repeat, Sir, there *is* the plea of Tyrants." It was used by Napoleon III. in justification of his invasion of the liberties of the people, and his overthrow of the Democratic Republic, and has been used by every despot who has deprived the people of their rights. And when the judge of the "necessity" is the Chief Magistrate of the Nation, and the Commander-in-Chief of the Army it is the more dangerous, because he who uses it has control both of the Purse and the Sword. [Loud applause.]

#### "WHERE ARE WE DRIFTING?"

I have now, Mr. Chairman, said all that I desire to say on the Proclamation, and the subject of arbitrary arrests. I add a few words in reference to one remark of the gentleman

from Essex. I understood him that he had been pained to read an article in the Albany Evening Journal, headed, "where are we drifting?" But, Sir, let me tell the gentleman that this is a question that is asked, and that *must* be answered; where *are* we drifting? When the war was commenced it was by a unanimous vote of Congress, and by the word of the President declared to be a war for the restoration of the Union, the supremacy of the Constitution, and the enforcement of the laws. In such a war, the sympathies of all loyal men were at once enlisted. The people of New York, with a promptness and liberality unequalled elsewhere furnished money for the necessities of Government, and men to fight the battles of the Union. So liberal was our State in support of the war, that to-day, with all her power and influence—with four millions of people within her borders, with her annual Canal Revenue of five millions, of dollars, New York by her contributions to the Federal Government is left without arms enough within the State, to supply a single Regiment. Her Arsenals are empty—everything has been yielded to the Federal Government, even to the arms of her National Guard. And after this proof of devotion—and the sacrifices she has made for the Union, a majority of her people, for condemning the Administrative acts of the Central Power—are denounced as "traitors," by the party responsible for the conduct of the Government—and the solemn pledges to prosecute the war for the restoration of the Union only are violated, our citizens incarcerated in military prisons and military commissions organized for the trial of civilians. In view of such alarming facts—"where" indeed are we drifting?

But these are not the only evidence of danger. Leading papers of the Republican party are advocating a separation of the Union, and declaring that unless we can conquer the Rebels within six months, we must seek the "*best available peace.*" Nor are these expressions hinting at separation, confined to newspapers only. Men high in position in the party—men who represent Republican constituents in Congress, have given utterance to similar opinions.

The gentlemen from Essex has, it is true, professed to favor a restoration of the Union as it was, under the Constitution as it is. In that sentiment we most cordially agree. I am ready to make any sacrifice for it, or to agree to any compromise, except one which would conflict with principle. But I ask the gentleman if this is the position of *all* the members of his party? Let me refer him to what Mr. Stevens said in the House of Representatives. I quote from a recent speech, in which he distinctly repudiates any allegiance to, or regard for the Constitution, and avows himself opposed to the restoration of the Union.

"I say, then, that we may admit West Virginia as a new State, not by virtue of any provision of the Constitution, but under our absolute power which the laws of war give us in the circumstances in which we are placed. I shall vote for this bill upon that theory, and on that alone; for I will not stultify myself by supporting

that we have any warrant in the Constitution for its proceeding.

This talk of restoring the Union as it was, under the Constitution as it is, is one of the absurdities which I have heard repeated, until I have become about sick of it. The Union can never be restored as it was. There are many things which render such an event impossible. This Union shall never, with my consent, be restored under the Constitution as it is, with slavery to be protected by it."

This, sir, is the position taken by the leader of the administration in Congress! Well may the gentleman from Essex, and well may we all repeat the enquiry made by Mr. Weed, the veteran commander of the forces who have for so many years, under various names, given battle to the Democracy—"Where are we drifting?" I tell the gentleman from Essex, and I repeat it to this House and to the people of the State, if this doctrine is to be endorsed, which has been uttered by Mr. Stevens in Congress, and echoed through the abolition press of the North, **THIS UNION IS DISSOLVED!**—and that, too, without the hope of restoration! We may as well comprehend it now, as hereafter. And when the fact becomes known that the Constitution, the sole bond of Union, is obsolete with the reigning dynasty at Washington, the South will not go alone. We already hear the distant rumbling of the thunder preassing the coming storm from Ohio, Indiana, Illinois and Kentucky. The great West will follow in the course of the mighty flow of waters down the Mississippi, and join the South in the separation. You cannot prevent it. That father of waters drains more than 1,250,000 square miles of fertile land above its confluence with the Red river. The West *must* have its highway open, and it will be opened to its mouth. Neither King Cotton, King Negro, or King Abolition can dam it. And, Mr. Chairman, when it is opened, the people bordering upon the Mississippi and its tributaries will determine their course. New York will be forced to make a her choice. It will be for her to say whether she will see her canals idle, her railroads unemployed, her rivers destitute of their wonted commerce or whether they shall continue to be richly freighted with the produce and merchandise of the continent. [Loud applause.]

These questions must be considered now.—They must be met by men who dare to look them in the face. We cannot avoid them if we would, and should not if we could. I hesitate not, Mr. Chairman, to denounce this war if it is to be carried on for the purpose of changing the condition of the races in the Southern States and not for the restoration of the Union under the Constitution; and I express only the sentiments of sane men every where, when I tell you the child is not born that will see the end of it! But if the administration *adopt a policy*—for it has had none yet—and announces to the world that the war is to be prosecuted for the restoration and not for the destruction of the Union; if the President will recall his proclamation; if Congress will reverse its unconstitutional course and repeal its proscriptive abolition measures; if the preservation of the Union and the Consti-

tution shall be taken as the "Sibboleth" of the war, then enthusiasm will again prevail in the ranks of our army; the legislature will have no need to pass bounty acts; the people will rally around the government, and the Union will be restored, and there is not power in the South or on the earth to prevent it! North and South, East and West, our great rivers, our railroads, our works of internal improvement, bind us together by a golden chain. *This Union will be restored*; and as for me, I will never consent to any peace that shall contemplate the division of our territory, or the destruction of our Nationality.

But if we say to the Southern States, "we mean to subjugate you—to change your social institutions—to change the map and make you dependent colonies"—and this war shall be conducted for these objects, then our armies will disappear as did the armed hosts of the Assyrian before the breath of the Lord.

These are not imaginary but real issues. They are before us to-day and must be met. He who seeks to evade them is a knave—he who dare not meet them is a coward. This is no time to pause and enquire who is to blame. Let us pass over that for the present at least, in silence, and act together in advocacy of that policy by which alone the Union can be restored and the nation saved from destruction. And let us not forget, sir, that there should be no trifling with the feelings or the passions of the People. Let those who as partizans uphold and justify the arbitrary acts of the administration against loyal citizens, remember that *we Democrats can now turn the tables upon them*. We are no longer an insignificant—a down-trodden minority, but a powerful party—a majority in the State. The Executive of the State of New York has as much right within its boundaries to arrest without warrant—to hold subject to his will—to suspend habeas corpus, as has the President in any State or Territory. Do gentlemen who are justifying such measures propose them as examples for Governor Seymour to imitate? If it is an "Executive" power—if the Executive is the sole judge of the necessity for its exercise—then the Executive of a State as its Commander in Chief occupies the same position on this subject as the President.

If then Abraham Lincoln is the sole judge of the "necessity," and if he can suspend the writ three hundred miles from where he sits. HONORABLE SEYMOUR HAS SIMILAR POWER WITHIN THE LIMITS OF HIS OWN STATE—and he too may judge of what is a "disloyal practice." You Republicans, will soon learn that this is a game at which two can play. If you mean to carry it on—if you continue to imprison loyal citizens without letting them know their crimes or see their accusers; by mere arbitrary orders from your President, his Secretary, his libertine marshals, or any of his miserable tipstiffs—then, sir, I tell you we will be free despite the Proclamations, and the Chief Magistrate of New York will see that we are! [Immense applause.] Let me not be understood as predicting any such action on the part of our Executive. I believe this matter has been so thoroughly discussed, and that the people have made their voices heard so distinctly, that there will be no more arrests. I believe there never was a time when the State of New York was more loyal than it is to-day; but I say, we owe it to ourselves to see that the sovereignty of this State and the rights of her citizens are vindicated, that the Constitutions of the United States, and of the State of New York are each preserved; and they can only be preserved by being observed by those who are called upon to administer the laws—and by the prompt punishment of every officer who knowingly violates either.

I have thus as briefly as I could uttered my conviction. If in doing so, I have spoken earnestly, it is because I feel deeply—if my words indicate despondency—it is because I see no bow of promise spanning the dark arch of the political heavens—yet, even now, after all the vacillation—the fraudulent practices—the actual and attempted wrongs—the violation of compacts—of constitutional guarantees—the inhumanity and the criminality of the National Administration—FAITH, star-eyed, penetrates the gloom and sees beyond the clouds that limit our vision blazing in the sky of Nations, the CONSTELLATION OF THE UNION SHINING IN ITS ORIGINAL EFFULGENCE—WITH NO MISSING PLEIAD—THE STARS ALL THERE. [Loud and long continued applause.]

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